

NR 445 Technical Advisory Group Meeting 9
March 1, 2001 Notes
Commerce Department 1st Floor Conference Room
Madison, WI

TAG Attendance: Jose Bucio, WI AFL-CIO; Dave Gardner, Briggs & Stratton Corp.; Hank Handzel, WPC & PIW; John Hausbeck, Madison Public Health; Howard Hofmeister, Bemis Company; Tom Ravn, Serigraph, Inc.; Sharon Schwab, League of Women Voters of the Wisconsin Rapids Area (via conference phone); Rudy Salcedo, City of Milwaukee Health; Bob Sherman, Kraft Foods; Jeff Schoepke, WMC; Kathleen Standen (for Terry Coughlin), Wisconsin Electric; Pat Stevens, Wisconsin Transportation Builders Association; Ty Stocksdale, S.C. Johnson; Caryl Terrell, Sierra Club; Eric Uram, Sierra Club; Liz Wessel, Wisconsin Environmental Decade; Ed Wilusz, Wisconsin Paper Council; Caroline Garber, WDNR; Jeff Myers, WDNR; Andrew Stewart, WDNR

Committee Attendance: Tina Ball, Xcel Energy; Linda Bochert, Michael, Best & Friedrich; Dave Ehrlart, Ashley Furniture; Robert Fassbender, HFO Associates (WMC); Jim Fleischmann, Liesch Environmental; Myron Hafele, Kohler Co.; John Heinen, Richland Center Foundry; Robert Heitzer; Pat Kandziora, UW-System; Lynn Knudtson, Future Foam; Jolene Plautz, Kwik Trip; Susan Rosenberg, Madison Gas & Electric; Mark Steinberg, S.C. Johnson; Jill Stevens, Alliant Energy; Lyman Wible, Kestrel Management Services; Tamera Witer, 3 M Company

Morning Session:

I. Welcome/Introductions/Agenda Review

Caroline Garber, Environmental Studies Section Chief

- Welcome and Introductions
 - Caroline Garber welcomed TAG and Toxics Committee members.
- Review of Meeting Notes
 - Sharon Schwab corrected the spelling of Beverly Mueller's name in the notes from November 14th
- Review of Meeting Agenda –No additional agenda items were added

II. Progress Report on Rule Revision

Caroline Garber presented an overview of the status of the rule revision (see handout titled, "Proposed Revisions to NR 445 Status Report as of February 28, 2001"). She also stated that the current timeline for the rule revision is for staff to go to the July 2001 Natural Resources Board for authorization to hold public hearings.

- *Qu.* – Under compliance demonstrations, item 3, E. Wilusz asked about the effect of moving the "good wood combustion" standards from the category of exemption to compliance demonstration.
- *Response* – A. Stewart explained that exemptions are typically used when a source does not need any showing of meeting requirements and is just exempted. In this case, a source is exempt if it actually is operated in a certain prescribed manner and can show that wood combustion is efficient. Thus, it is more appropriate to put this requirement in the section for compliance demonstrations. There is no change in requirements as a result of moving it from one location in the rule to another. It is just a more appropriate section of the rule to list these requirements.
- *Qu.* – Under compliance demonstrations, item 2.b., K. Standen asked what dispersion models are to be used if a source wishes to demonstrate compliance with a cumulative risk of 10-5 off property.
- *Qu.* – E. Uram asked how the models are approved and how a source's modeling is approved.
- *Response* – A. Stewart stated that US EPA dispersion models would be used to make this demonstration and the procedures will be the same that the Department uses currently in permits.
- *Qu.* – Under compliance demonstrations, item 5, E. Wilusz asked about the use of "an approach similar to good wood combustion and gasoline dispensing activities" and what chemicals might be eligible for this approach.
- *Response* – A. Stewart explained that if we could find specific sources that were similar in nature, one could define a generic compliance strategy for that industry sector. C. Garber added that chemicals like asphalt fumes and dusts might be categories where such an approach might be considered.

- *Qu.* – L. Bochert asked if the rule will be clear about the date that becomes the effective compliance date of the rule.
- *Ans.* - C. Garber said that the rule, when drafted, will be clear on this issue.

III. Revised Proposal for Exemption of Indoor Air Fugitive Emissions

Andrew Stewart presented the indoor air fugitive exemption issue (see slide handouts, titled “Indoor Fugitive Emissions”) explaining that the November 2000 draft language met with a lot of comments and concerns. The department is proposing to leave the language in the current NR 445 intact as a result, but will develop guidance to more clearly define the purpose of the indoor fugitive exemption and define what is and what is not an appropriate use of the exemption.

- *Comment* – R. Salcedo asked whether the Department still intended to meet the goal of assuring that indoor fugitives do not adversely affect public health, in light of the Department going back to the original rule language.
- *Comment* – T. Stocksdale stated that the original task force in 1985 did consider the fact that there are short distances to fencelines (near 50 feet) and considered that appropriate zoning and insurance requirements were in place and that there would be enough dilution to reduce the impact of the indoor fugitive emissions to a safe level (assuming that the concentration of exiting air was below the appropriate TLV limit).
- *Comment* – R. Salcedo stated that in Milwaukee, for example, there are many facilities located next to residences, at distances less than 50 feet away – sometimes less than 20 feet away, and these sources are “grandfathered” in terms of zoning requirements, etc. In his opinion, there can be problems from these indoor air fugitives.
- *Comment* – T. Stocksdale said that public health officials may still be frustrated to a degree because of odor complaints, for example, regardless of what NR 445 does.
- *Qu.* – T. Stocksdale asked how one might demonstrate compliance with OSHA requirements?
- *Ans.* – A. Stewart stated that compliance can be demonstrated by a number of ways (e.g., showing industrial hygiene monitoring done at a facility (for internal or OSHA purposes), or by engineering calculations using reasonable assumptions). This is what how this exemption currently is demonstrated for carcinogens and chemicals with reference concentrations.
- *Comment* - T. Ravn was concerned that sources that were near the thresholds would be scrutinized if it was believed that indoor fugitives were present.
- *Note:* For all chemicals, reporting of all fugitive emissions of NR 445 chemicals is required in the emissions inventory NR 438. Additionally, indoor fugitive emissions are included in determining whether an emissions unit must be included in an application for an operation permit. The issue at hand is whether fugitive emissions of non-carcinogens with 1 or 24 hour averaging times are considered in meeting NR 445 ambient air concentrations.
- *Comment* - L. Knudtson stated that inappropriate developments (day cares, nursing homes, etc) are occurring next to industrial parks and industry sites. There should be buffer zones between these different land uses.
- *Qu.* – R. Salcedo asked what form the guidance would be in? and what code does a Department inspector refer to – a general ventilation standard?
- *Comment* - L. Wessel said that if one of the reasons for having general ventilation (as listed in A. Stewart’s power point presentation materials), was to remove a contaminant, then this ventilation is not selective of whether pollutants are carcinogens or non-carcinogens).
- *Qu.* – T. Stocksdale asked whether the Department would be using ASTM or other standards.
- *Ans.* – A. Stewart stated that the Department would be looking to generally accepted industry standards in assessing whether a system was used for general ventilation.
- *Comment* - L. Wessel stated that she is concerned about non-carcinogenic hazardous air pollutants (HAPs) as well as carcinogenic HAPs. We are not adequately addressing the concern over a “toxic shell game” that can move indoor pollutants to outdoors and not having ability to keep the public safe.
- *Comment* - E. Uram added that he is concerned with 24 hours a day and 7-day a week exposures that someone might be exposed to, not just a 40 hour workweek.
- *Comment* - J. Hausbeck said that he would feel better if a source had to make some kind of “showing” that if the air inside a building is safe and that outside the building the concentration will be at least 1/42 of the indoor value, then it would be “OK”. There are too many unknowns. People

who live around a facility, given knowledge of what the air quality is, can figure out what risks they want to take and which they don't. The problem with the current rule is that it allows the current lack of data to be "approvable".

- *Response* – A. Stewart said that in developing guidance on this issue we hope to develop a better relationship with other indoor air quality professionals. He pointed out that if a source is complying with the emissions inventory requirements, the Department receives information on the total amounts of chemicals released into the ambient air.
- *Comment*– C. Terrell brought up an example of zoning and potential exposure of sensitive individuals to fugitive (and stack emissions) in a recent permit hearing in Kenosha. During the public comment period for a permit for a new facility that has an on-site day care associated with it, Sierra Club tried to raise issues about having sensitive individuals in an area zoned industrial. She stated that the source would soon be expanded. DNR assumed that it had no jurisdiction and did not respond to these comments. She said that the Department needs flexibility to consider these types of issues in a specific permit.

IV. Revised Proposal for Reporting of Accidental Spills

Jeff Myers presented revised language for addressing accidental spills. The intent of the language was to make the rule language consistent with the requirements in the Wisconsin Spill law, s. 292.11, Stats., as well as the requirements of NR 706, Wis. Admin. Code, which addresses discharges of hazardous substances. In addition, the proposed language established a de minimis for NR 445 chemicals that do not already have de minimis reporting levels in NR 706. These de minimis reporting levels are the same as in the November 2000 version of proposal.

- *Qu.* – T. Stocksdale asked if the reporting covered individual constituents, or general substances. He stated that gasoline, for example, contains benzene and is exempt in NR 706. If there is a gasoline spill, does one report gasoline or does one have to also consider the benzene separately?
- *Response* – Air staff will discuss this issue with the DNR spills team and with legal staff.
- *Qu.* – L. Bochert asked whether the term "air spills" has the effect of making the exemptions in NR 706 not applicable to this section. In addition, she stated that the time frame for reporting (e.g., immediately, minutes, etc.) needs to be clarified.
- *Comment*– C. Terrell commented that the NR 706 based de minimis exemptions were based on a lot of discussion between stakeholders and they were based on a common sense approach to handling everyday discharges of hazardous substances, such as those as a result of automobile accidents, spills at gas stations, etc. These de minimis levels were derived without public input and she asked Department staff to discuss with our legal department whether the Department has authority to establish these de minimis exemptions, in light of the requirements of the spill law.
- *Qu.* – T. Ravn asked whether a spill of ink had to be reported vs. a release to the air.
- *Comment*– D. Gardner said that this provision should be removed from NR 445. He is not sure why it is necessary.
- *Qu.* – Someone else asked when is a spill just a violation of a permit and it doesn't need to be reported. In addition, what does it mean to be "permitted"?
- *Qu.* . – Another question was what the definition of stationary source is, as compared to mobile sources. For example, if a vehicle causes a hazardous substance discharge on a stationary source's property, does that require reporting under the proposed NR 445 language.
- *Comment*– Others on the TAG stated that the current language is confusing and the requirements should be more clear (e.g., the language in the proposed 1(a)). There was general interest in having all the requirements for hazardous substance discharge notification in one place in the Department regulations. Some commentors believed that NR 706 addresses this already and it is not needed in NR 445.
- *Comment*– One commentor stated that EPA is being challenged in the courts for trying to deal with spill issues in one or more 112(d) Maximum Achievable Control Technology (MACT) standards.
- *Response* – C. Garber said these questions would be discussed with the Department's spills team. This issue will be brought back to the TAG for future consideration.

V. Proposed Revisions to NR 438, Emission Inventory Reporting Requirements

Jeff Myers presented the proposed language changes to NR 410 (fees) and NR 438 (emissions inventory). See the handouts for the Draft changes to NR 410 and NR 438 and the 12 page table showing the reporting threshold for NR 438, titled “TAG March 2001 Draft NR 438”.

- *Comment*– T. Stocksdale proposed that the lowest level of reporting in NR 438 should be placed at 100 pounds per year (for the acute toxics, with 1 or 24 hour averaging times). He said that it is hard to estimate such small amounts. He said that “capturing” data on small amounts of some chemicals, is not worth the cost to industry.
- *Response* – C. Garber responded that Department staff have thought about the value of using a box for sources to check if they have emissions of less than a certain amount or emissions in a given range.
- *Comment*– C. Terrell suggested that sources also include how they arrived at the calculation.
- *Comment*– D. Gardner mentioned that EPA already has something like this in its TRI reporting.
- *Comment*– R. Heitzer said that industry needs a threshold for reporting.
- *Qu.* – E. Wilusz asked about the wording in the proposed language in NR 438.01(b) that states that material safety data sheets (MSDS’s) for carcinogens a “with a control requirement” need to be reported if the content of the chemical is above 0.1%. He wanted to know if this wording changed anything from what the rule currently says.
- *Response* – This language (i.e., carcinogens with a “control requirement”) is just replacement language for a reference to carcinogenic chemicals currently listed in Tables 3A and 3B of the rule.
- *Qu.* – L. Bochert asked why chemicals such as wood dust and asphalt fumes still have thresholds listed for them. In addition, she wondered if a study of the sources of these chemicals would possibly change the listing thresholds.
- *Response* – C. Garber responded, saying that this reflects the use of the TLV based approach for non-carcinogens and that at this time, she does not anticipate that these thresholds will change.
- *Comment*– H. Hofmeister stated that the Department should consider exempting indoor fugitive emissions from 438, especially if they are insignificant as defined in the significance levels of emissions that need to be included in a permit.
- *Comment*– D. Gardner suggested that one interpretation of the inventory requirements would be that even janitorial products would have to be included in the calculations of emissions for the purposes of NR 438.
- *Comment*– E. Wilusz mentioned that the language in NR 410.04 (2)(b)2. needs to be changed to 5,000 tons per year rather than the current level of 4,000.

VI. Industry Screening Analysis

Caroline Garber discussed a preliminary study design for determining the impacts of the rule on Wisconsin businesses (see the handout, titled “Small Business Impact Screening Analysis” and the spreadsheet titled “NR 445 Business Impact Analysis”).

- *Qu.* – C. Terrell asked what types of industries would be evaluated using this screening process.
- *Ans.* – C. Garber said that, for example, the wood dust industry might be the subject of the analysis to see what the universe of potentially affected sources is and what compliance options would be available.
- *Comment*– Someone suggested checking MACT background documents for information on sources of HAPs
- *Comment*– T. Stocksdale suggested that he might be able to help take some things out of the lists as not likely to be emitted in Wisconsin. We can also ask some associations to help.
- *Comment*– J. Schoepke said that WMC can pass this information around to members and that WMC was “ready to roll up its sleeves and get to work”.
- *Qu.* – E. Wilusz asked whether the current spreadsheet of chemicals contains only the new chemicals and wondered if staff would add others that have large changes in their thresholds.
- *Ans.* – C. Garber stated that staff will also look at chemicals that have had a major change in their thresholds.

- *Comment*—J. Fleischman said that staff might find it useful to narrow the list of affected industry types to 50 or 100 and then contact chambers of commerce and get them to send blanket mailings to these types of sources and have them check their MSDSs for these chemicals.
- *Qu.* — L. Bochert asked if the analysis will be limited to small businesses.
- *Ans.* — C. Garber said both large and small businesses would be included in these analyses.

VII. Other Business/Wrap Up/Next Meetings

- The next meeting date has been set for **Wednesday, April 18, 2001 from 9:30 a.m. to 3:30 p.m. at the DNR Offices in the GEF 2 in Madison (Room 027).**

Notes prepared by: Jeff Myers, Andrew Stewart, and Caroline Garber, Bureau of Air Management

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